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In the Matter of

MUR 6475

Andrew J. McCrosson, Jr.

CELA

SENSITIVE

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

- (1) Enter into pre-probable cause conciliation with Respondent;
- (2)
- (3) Approve the appropriate letter.

II. INTRODUCTION

The Commission previously found reason to believe that Andrew J. McCrosson, Jr., former treasurer of LoBiondo for Congress (the “Committee”), knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b), and 439a(b) and authorized an investigation. *See* Certification (Oct. 18, 2011). As part of our investigation, we interviewed McCrosson and reviewed documents and information obtained from the Committee’s *sua sponte* submission and a parallel criminal investigation of the Department of Justice (“DOJ”). Based on our assessment of that evidence, we recommend that the Commission enter into conciliation with McCrosson for knowingly and willfully violating the Federal Election Campaign Act of 1971, as amended (the “Act”), prior to a finding of probable cause to believe.

III. FACTUAL AND LEGAL ANALYSIS

As outlined in the First General Counsel's Report in this matter, incorporated by reference herein, McCrosson made unauthorized disbursements to himself from Committee funds totaling \$458,000. *See* First Gen. Counsel's Rpt. at 5-6 ("First GCR"). Our investigation confirmed that McCrosson made substantial unauthorized disbursements, failed to track them,

1 and failed to disclose them to the Commission. The investigation also revealed that McCrosson
2 took numerous steps to disguise his unlawful conduct, demonstrating that he violated the Act
3 knowingly and willfully.

4 **A. McCrosson's Role With the Committee**

5 McCrosson became treasurer for the Committee after having served as treasurer for
6 Representative LoBiondo's campaign for state office years earlier. See Report of Investigation
7 of Andrew J. McCrosson, Jr. at 3 (Apr. 5, 2012) ("McCrosson ROI"). He was the Committee's
8 treasurer and custodian of records from 1992 until August 2010 and was paid amounts between
9 \$3,000 and \$8,000 per election cycle for those services. See LoBiondo *Sua Sponte* Submission
10 at 1 (May 25, 2011), Pre-MUR 521 (LoBiondo for Cong.); Information ¶ 3, *United States v.*
11 *McCrosson*, Crim. No. 11-137 (D.N.J. Mar. 4, 2011);

12 McCrosson's duties with the
13 Committee included, *inter alia*, signing contracts with vendors, processing invoices from
14 vendors, writing checks and disbursing Committee funds, entering disbursement information into
15 the Committee's Aristotle software, and reconciling bank accounts. McCrosson ROI at 1. He
16 maintained possession of the Committee's financial records and was the only signatory on the
17 Committee's bank accounts. See Information ¶¶ 3, 7-8; E-mail from William McGinley,
18 Counsel, LoBiondo for Cong., to Ana J. Peña-Wallace, Attorney, FEC, at Ex. A (Sept. 30, 2011,
19 03:20 EST) ("Sept. 30 E-mail"). He was solely responsible for reconciling bank statements with
20 the Committee's FEC disclosure reports, and for most of his tenure with the Committee,
21 McCrosson was the only staff member who received the Committee's bank statements. See
22 Sept. 30 E-mail at Ex. A ¶¶ 1, 3;

23 McCrosson ROI at 1-2. McCrosson conducted the Committee's financial

1 transactions and bank reconciliations without any supervision. McCrosson ROI at 2. He also
2 had sole responsibility for completing and filing the Committee's disclosure reports with the
3 Commission. *Id.* at 2.

4 **B. McCrosson's Embezzlement**

5 The investigation confirmed that between 1994 and August 2010, McCrosson issued 133
6 unauthorized checks to himself from the Committee's bank account to pay for personal expenses,
7 including "a federal tax lien, home mortgage payments, college tuition payments for his children,
8 and other living expenses." *See Information ¶ 15*

9
10 First GCR at 6.¹

11 Both DOJ's investigation and the Committee's internal review of its financial records
12 confirmed that McCrosson disbursed over \$400,000 to himself and omitted those disbursements
13 from the Committee's disclosure reports. DOJ and the Committee also discovered that
14 McCrosson's embezzlement resulted in substantial discrepancies between the cash-on-hand
15 balance disclosed to the Commission and the balance in the Committee's bank account. By Fall
16 2010, that discrepancy totaled \$541,853.39. *See LoBiondo for Cong., Miscellaneous Report*
17 *(FEC Form 99) (Jan. 6, 2012).*

18 McCrosson claims he began to use the Committee's funds for personal expenses because
19 of personal financial troubles but intended to reimburse the campaign.

20 McCrosson ROI at 3-4.

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¹ McCrosson also apparently made one unauthorized purchase using the campaign's credit card for tax preparation software that the Committee states did not appear to be for campaign purposes. *See* E-mail from William McGinley, Counsel, LoBiondo for Cong., to Ana J. Peña-Wallace, Attorney, FEC (Nov. 16, 2011, 12:40 EST).

C. McCrosson's Efforts to Disguise His Scheme

McCrosson has admitted to embezzling campaign funds, as well as disguising the embezzlement by filing false disclosure reports with the Commission and creating fictitious investment accounts to explain and cover-up the absence of the stolen funds. First GCR at 5;

Initially, to conceal his theft, he omitted the disbursements from the Committee's disclosure reports and deliberately reported inaccurate cash-on-hand balances that did not reflect the unauthorized disbursements. Later, McCrosson created fictitious investment accounts — specifically, certificates of deposit — to justify the cash-on-hand discrepancies in the event anyone reviewed the Committee's bank statements. McCrosson ROI at 2. McCrosson further admits that, to "cover his tracks" and "make it appear the money not present in the accounts was being invested," he manufactured a fictitious letter on Committee letterhead addressed to a representative of Wachovia Securities referring to \$455,539.09 in certificates of deposit that did not, in fact, exist. ; see Letter from Andrew J. McCrosson, Jr. to John W. Short, Assoc. V.P., Wachovia Securities (Feb. 17, 2009) (submitted with Pre-MUR 521 (LoBiondo for Cong.) (Nov. 11, 2010) (the "Committee Documents")). He also created a false schedule of investments for the new Committee treasurer's review, falsely representing that the campaign owned investment accounts with a balance of \$489,327.32.

see Committee Documents.

McCrosson circulated the false account information in e-mails to other Committee staff, and later falsely represented that the funds had been transferred to an investment account with Citigroup. See E-mail from Andrew J. McCrosson, Jr. to Mary Annie Harper, Chief of Staff (Aug. 24, 2010), Committee Documents;

1 To prevent
2 discovery of his theft, McCrosson also delayed providing campaign financial documents to the
3 Committee's new treasurer. Letters and E-mails from Committee staff to Andrew J. McCrosson,
4 Jr., Committee Documents; As a result of his
5 many efforts to conceal the scheme, McCrosson prolonged the Committee's discovery of his
6 illegal activity following his departure in August 2010 until about November 2010.

7 **D. McCrosson Knowingly and Willfully Violated the Act's Recordkeeping,**
8 **Reporting, and Personal Use Provisions**
9

10 As treasurer, McCrosson was obligated to keep accurate accounts and make accurate
11 reports and was prohibited from using campaign funds for personal expenses. See 2 U.S.C.
12 §§ 432(c), 434(b)(1)-(2), (4)(G), (5), (6)(A), 439a(b)(2). McCrosson admits that he did not keep
13 Committee records of the unauthorized payments he made to himself; McCrosson claims he
14 mostly kept "a mental note of how much he was taking," but occasionally wrote down a single
15 number without any further notations. Sept. 30 E-mail at Ex. A ¶ 2;
16 McCrosson ROI at 2-3. McCrosson also violated his reporting obligations as treasurer: he
17 omitted from the Committee's disclosure reports filed with the FEC 133 disbursements to
18 himself, each of which exceeded \$200.

19 As a result of these omissions, the Committee's cash-on-hand disclosed in its reports
20 was inaccurate, reflecting a far higher balance than the accounts actually contained. McCrosson
21 ROI at 2.² McCrosson admits he used the Committee's funds to pay a federal tax lien, a home
22 mortgage, college tuition, and other living expenses, some of which are *per se* personal use

² Although McCrosson embezzled approximately \$458,000 in campaign funds, he overstated the Committee's cash-on-hand balance in reports filed with the Commission as \$541,853.39, that is, by \$83,853 more than he stole. Concerning that excess, McCrosson explained that he took into account not only the unauthorized disbursements but also the amount of interest his fictitious investments might have earned. He acknowledged, however, that he may have overestimated the fictional amount of interest the embezzled funds might have earned had they actually been invested. McCrosson ROI at 3; see Information ¶¶ 17-18;

1 violations under the Act and Commission's regulations. *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R.
2 § 113.1(g) (identifying home mortgage and tuition payments as *per se* personal use violations).

3 McCrosson's elaborate scheme to conceal his theft from the Committee and to avoid
4 detection after his replacement as treasurer, along with his guilty plea to the conversion of
5 campaign funds, amply demonstrate that he knew his conduct was illegal when he acted. *See*
6 First GCR at 11-12 (describing reason to believe McCrosson acted with knowing and willful
7 intent).

8 For the foregoing reasons, the record evidence developed during the investigation in this
9 matter demonstrates that McCrosson converted campaign funds to personal use and deliberately
10 violated the recordkeeping and reporting provisions of the Act. Therefore, McCrosson
11 knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b), and 439a(b), by converting
12 Committee funds to personal use, failing to keep accurate records, and filing inaccurate reports
13 with the Commission.

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MUR 6475 (McCrosson)
Second General Counsel's Report

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Second General Counsel's Report

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MUR 6475 (McCrosson)
Second General Counsel's Report

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V. RECOMMENDATIONS


1. Enter into conciliation with Andrew J. McCrosson, Jr., prior to a finding of probable cause to believe;
- 2.
3. Approve the appropriate letter.

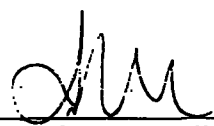
Anthony Herman
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8/28/12
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